

Hogan Lovells US LLP
390 Madison Avenue
New York, NY 10017
T +1 212 918 3000
F +1 212 918 3100
www.hoganlovells.com

April 29, 2021

MEMO ENDORSED

Via ECF

The Honorable Lewis A. Kaplan
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *United States v. Clenista*, No. 1:15-cr-00682-LAK-4 (S.D.N.Y.)

Dear Judge Kaplan:

We write on behalf of Defendant Marlon Clenista in the above-captioned matter to request that the record be amended for purposes of Mr. Clenista's appeal to the Second Circuit. Specifically, Mr. Clenista requests that the Court docket his letter of January 11, 2021, which was submitted to chambers via electronic mail. A true and correct copy of the January 11 letter is attached hereto as **Exhibit A**. Mr. Clenista makes this request pursuant to Rule 10(e) of the Federal Rules of Appellate Procedure, so that the record on appeal includes all the papers submitted to the District Court on Mr. Clenista's compassionate release motion. We also include a proposed order for the Court's consideration.

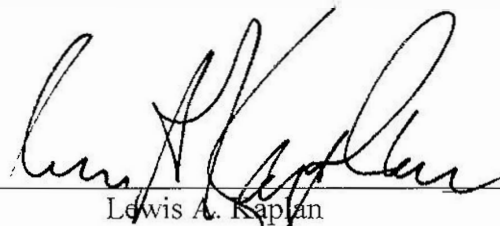
Rule 10(e) of the Federal Rules of Appellate Procedure leaves it to the District Court, in the first instance, to ensure that the record on appeal is complete and that any omissions are corrected. Rule 10(e)(1) provides: "If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly." Fed. R. App. P. 10(e)(1).

On December 4, 2020, Mr. Clenista filed a motion for compassionate release because of extraordinary and compelling circumstances created by Mr. Clenista's family circumstances, health risks, and the COVID-19 pandemic. ECF No. 179. The Government opposed the motion for compassionate release, ECF No. 184, and Mr. Clenista filed a reply brief, ECF No. 185. A week after his reply, on January 11, 2021, Mr. Clenista submitted a supplemental letter by email to the Court's chambers, consistent with the Court's "Emergency Supplement to Individual Rules," which provided the Court with updated information on the conditions at the facility where Mr. Clenista was incarcerated. **Ex. A**. The Court denied Mr. Clenista's motion for compassionate

The letter in question, which was immaterial to the matter before the Court and did no more than call attention to matters that properly would be subject of judicial notice, was emailed to a general chambers email address but it never was filed. It was not brought to the attention of the undersigned prior to the entry of the order appealed from. Accordingly, it was not part of the record within the meaning of Fed. R. App. P. 10(a). In view of the fact that it did not come to the attention of the undersigned, modification of the record to include it in order to show what occurred in the district court is unnecessary. Accordingly, the motion is denied. In any case, having now reviewed the letter, and to avoid any possibility of an unnecessary remand, the Court makes clear that the letter would not have altered the result reached previously.

SO ORDERED.

Dated: May 7, 2021

A handwritten signature in black ink, appearing to read "Lewis A. Kaplan", is written over a horizontal line.

Lewis A. Kaplan
United States District Judge